

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

AMANDA J. SMITH)	
Claimant)	
VS.)	
)	
WAL-MART)	Docket No. 1,021,100
Respondent)	
AND)	
)	
AMERICAN HOME ASSURANCE CO.)	
Insurance Carrier)	

ORDER

Respondent and its insurance carrier (respondent) requested review of the February 23, 2005 preliminary hearing Order entered by Administrative Law Judge (ALJ) John D. Clark.

ISSUES

Judge Clark found that claimant suffered a compensable injury and ordered respondent to provide her with medical treatment, naming Prince Chan, M.D., as the authorized treating physician. Respondent was further ordered to pay all past medical expenses.

Respondent contends the ALJ erred in finding that claimant suffered a work-related accident on November 29, 2004. Conversely, claimant asks that the ALJ's Order be affirmed in all respects.

Accordingly, the issue for the Board's review is whether claimant has met her burden of proving that she suffered personal injury by accident arising out of and in the course of her employment with respondent as alleged.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record compiled to date, the Board finds that the ALJ's preliminary hearing Order should be affirmed.

Claimant alleges that she was carrying boxes of merchandise from a storeroom the morning of November 29, 2004, when her foot struck a box on the floor causing her to trip or stumble. Claimant was able to catch herself using her free right hand such that she did not fall; however, in doing so she injured her right wrist, forearm and elbow. Claimant immediately reported this accident to her supervisor, Jennie Shook, but did not file an accident report nor request medical treatment until December 2, 2004.

Respondent contends that there are discrepancies in claimant's description of her accident, including the time of day and the type of box she tripped on. But the evidence respondent primarily relies on to dispute claimant's allegations is the security videotape of the room where the accident allegedly occurred. Respondent contends that the videotape clearly shows that claimant did not have an accident whereas claimant points to the same videotape as establishing that she did. The Board has reviewed the videotape and finds it to be inconclusive, neither confirming nor contradicting claimant's testimony.

Respondent points to other discrepancies in the record, but they are the type of minor details that often arise in the retelling of events after the passage of time or through a third person. The fact that claimant had prior right shoulder and elbow problems is not disputed. There is no evidence that claimant had prior right wrist symptoms. The medical records are consistent with claimant's testimony about the accident and the mechanism of injury.

Although there were no witnesses to claimant's accident, there was a security videotape. Unfortunately, that tape is not of a quality that can be considered as conclusive evidence for either party. Judge Clark had the opportunity to view claimant testify and apparently found her to be a credible witness. The Board is not persuaded that his conclusion should be disturbed. Taken as a whole, the record supports claimant's contention that she suffered personal injury by accident as alleged.

WHEREFORE, the Appeals Board affirms the February 23, 2005 Order entered by Administrative Law Judge John D. Clark.

IT IS SO ORDERED.

Dated this ____ day of June, 2005.

BOARD MEMBER

c: Kelly W. Johnston, Attorney for Claimant
Janell Jenkins Foster, Attorney for Respondent and its Insurance Carrier
John D. Clark, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director